

Application No. : 09/815,982
Filed : March 22, 2001

REMARKS

Claims 1-8, 10-14, 19-24, 36, 38 and 41-58 were pending in the application. By this paper, no claim amendments, additions or cancellations have been made. Accordingly, 1-8, 10-14, 19-24, 36, 38 and 41-58 are presented herein for examination.

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Double Patenting Rejections

‘034 Patent - Claims 1-8, 10-14, 19-24, 36, 38, and 41-58 were rejected on the grounds of non-statutory obviousness-type double patenting as being unpatentable over Claims 1-14 of U.S. patent No. 6,228,034 (from here on refer to as 034’ patent).

Applicant respectfully traverses this rejection, and submits that independent Claims 1, 7, 8, 19, 36, 38, 45, 46, 49, 51, 53, 56, and 58 are patently distinct from the above referenced 034’ patent.

Firstly, the present invention claims a method or apparatus of “locating a blood vessel” in Claims 1, 8, 36, 45, 49 (corresponding to “locating at least one wall of a blood vessel” in Claims 7, 53, 56, 58, “blood vessel locating apparatus” for Claims 38, and 51, and “method of locating a first blood vessel” for Claim 46).

In contrast, the methods or apparatus claims of the 034’ patent are directed to a method or apparatus respectively “for monitoring the pressure within a subject's blood vessel” (see, Claims 1, 5, 7, 8, 10, 13, 14 of the ‘034). The ‘034 patent simply does not teach a method and apparatus for the noninvasive location of a blood vessel location.

If, *arguendo*, the Examiner’s position is that one must know the location of a blood vessel to monitor its pressure, the ‘034 teaches no way of locating the vessel in order to properly place the apparatus (other than indirectly use of manual location methods; i.e., feeling the pulse with one’s finger).

Moreover, the use of the word “location” in the 034’ patent is in a completely different context; i.e., vertical location or applanation position of the sensor, and not lateral or distal/proximal vessel position.

Lastly, Applicant notes that the aforementioned preamble limitations are not merely that, but also correspond to limitations within the body of the claims themselves. For example, Claim

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1 recites "...positioning said blood pressure sensor based at least in part on said act of locating..." Clearly, the claims or subject matter disclosed in the '034 in no way teach or suggest such functionality claimed in the present application.

5 Hence, the aforementioned double patenting rejections comprise clear error, and should be withdrawn. This is literally a case of "apples" versus "oranges".

Moreover, since all independent claims are erroneously rejected, all dependant claims depending directly or indirectly therefrom are also erroneously rejected.

10 '774 Patent - Claims 1-8, 10-14, 19-24, 36, 38, and 41-58 were rejected on the grounds of non-statutory obviousness-type double patenting as being un-patentable over claims 1-41 of U.S. Patent No. 6,554,774 (from here on refer to as '774').

Applicant respectfully traverses this rejection, and submits that independent Claims 1, 7, 8, 19, 36, 38, 45, 46, 49, 51, 53, 56, and 58 are patently distinct from the above referenced '774 patent.

15 Firstly, the present application claims a method or apparatus for "locating a blood vessel" (Claims 1, 8, 36, 45, 49); "locating at least one wall of a blood vessel" (Claims 7, 53, 56, 58); "blood vessel locating apparatus" (Claims 38, 51); and "method of locating a first blood vessel" (Claim 46).

20 In contrast, the methods or apparatus claims of the '774' patent are directed to a method or apparatus "of assessing hemodynamic properties within the circulatory system of a living subject" (Claim 1, 8, 13, 15, 22, 24, 27, 31, 32, 33, 34). The '774' patent does not teach or suggest a method and apparatus for the noninvasive assessment of blood vessel location. Hence, for reasons similar to those discussed infra with respect to the '034 patent, the Examiner's double patenting rejections over the '774 comprise clear error, and should be withdrawn.

25 Moreover, since all such rejections directed to the dependent claims depending directly or indirectly from the aforementioned independent claims should be withdrawn as well.

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§102 Rejections

Per Pars. 5 and 6 of the Office Action, Claims 1-8, 10-14, 19-24, 36, 38, and 41-58 stand rejected under 102(f) over the '034 patent, as claimed subject mattering being identical without a common inventor. Applicant herein traverses this rejection in its entirety.

As stated above, Applicant believes the inventions claimed in the present application and those of the '034 patent are in no way identical or obvious variants of one another, and hence the requirement for common inventorship is completely improper. As noted, the present invention is directed to, *inter alia*, apparatus and methods for location of a blood vessel, which are wholly distinct from apparatus and method to measure blood pressure or other parameters from that blood vessel once located.

Accordingly, Applicant requests that the Section 102(f) rejection be withdrawn in its entirety.

Other Remarks

Applicant submits that all claims presented herein are both novel and non-obvious over the art of record, and accordingly are in condition for allowance.

Applicant hereby specifically reserves the right to prosecute claims of different or broader scope in a continuation or divisional application, as well as all rights of appeal, including the pilot pre-appeal brief conference program.

Applicant notes that any claim cancellations or additions made herein are made solely for the purposes of more clearly and particularly describing and claiming the invention, and not for purposes of overcoming art or for patentability. The Examiner should infer no (i) adoption of a position with respect to patentability, (ii) change in the Applicant's position with respect to any claim or subject matter of the invention, or (iii) acquiescence in any way to any position taken by the Examiner, based on such cancellations or additions.

Furthermore, any remarks made with respect to a given claim or claims are limited solely to such claim or claims.

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If the Examiner has any questions or comments that may be resolved over the telephone, he/she is requested to call the undersigned at (858) 675-1670.

Respectfully submitted,

GAZDZINSKI & ASSOCIATES

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By:



Robert F. Gazdzinski
Registration No. 39,990
11440 West Bernardo Court, Suite 375
San Diego, CA 92127
Telephone No.: (858) 675-1670
Facsimile No.: (858) 675-1674